

From: [Fugh, Justina](#)
To: [Lance, Kathleen](#); [Lucey, John](#)
Subject: confirmation of impartiality determination for both of you (for our records)
Date: Monday, April 5, 2021 10:37:00 AM

Hi Kathleen and John,

This note confirms that I have authorized you both to participate in specific party matters that involve the North Carolina Department of Environmental Quality (NC DEQ). Within the last year, you worked at NC DEQ but are now at EPA to support Administrator Regan as he carries out his official duties. Under President Biden's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer is a party, but state government is excluded under the definition of "former employer." Therefore the Ethics Pledge does not apply to your NC DEQ employment.

Federal ethics rules, however, do not contain a similar exclusion for state or local government. Under the impartiality provisions of the Standards of Ethical Conduct for Employees of the Executive Branch, you have a "covered relationship" with the NC DEQ under 5 C.F.R. § 2635.502(b)(1)(iv). For one year after you left the NC DEQ, you cannot participate in any specific party matter in which the NC DEQ is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. See 5 C.F.R. § 2635.502(a). That said, the ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in your participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d).

This note formally confirms that I have authorized you to participate in particular matters in which the NC DEQ is a party. The Administrator has already been granted a limited impartiality determination to permit him to interact with NC DEQ, and you are authorized to assist him as necessary, even if your former employer is involved. I have reviewed the impartiality factors set forth under the regulations and determined that the interest of the United States Government outweigh any concerns about your impartiality.

If either of you has any questions regarding this determination, or if a situation arises in which you need advice or clarification, please feel free to contact me.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Washington

FROM: Justina Fugh
Alternate Designated Agency Ethics Official and
Director, Ethics Office

Digitally signed by Justina
Fugh
Date: 2021 01.26
14:47:40 -05'00'

TO: Casey Katims
Deputy Associate Administrator for Intergovernmental Affairs
Office of Congressional and Intergovernmental Relations

As the Deputy Associate Administrator for Intergovernmental Affairs for the Office of Congressional and Intergovernmental Relations (OCIR) of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of Washington. Within the last year, prior to being selected for this position, you served as the Director of Federal and Inter-State Affairs for Washington Governor Jay Inslee.

Under President Biden's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore the Ethics Pledge does not apply to your State of Washington employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of Washington.

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of Deputy Associate Administrator for Intergovernmental Affairs, you will have a "covered relationship" with the State of Washington pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date your employment with the Governor's Office terminated, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Washington is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

¹ *See* Exec. Order 13989, Section 2(k), which provides that "'former employer' does not include...State or local government."

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that EPA takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality, and I am authorizing you to participate as Deputy Associate Administrator for Intergovernmental Affairs for OCIR in particular matters that involve the State of Washington with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with the Governor's Office. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since 2018, you have served as the Director of Federal and Inter-State Affairs for Washington Governor Jay Inslee. In this role, you served as the primary federal policy advisor to Governor Inslee and directed the State of Washington's engagement with Congress, the White House, federal agencies, fellow governors' offices, other states, and various other stakeholders in D.C. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the Governor's Office. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you have a defined contribution plan and a defined benefit plan with the State of Washington. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. But pursuant to the regulatory exemptions, this personal financial interest is not a disqualifying one that raises concerns about participation in particular matters affecting the holdings of the plan or in particular matters of general applicability affecting the sponsor of the plan under the federal conflicts of interest statute. See 5 C.F.R. §§ 2640.201(c)(1)(ii), 2640.201(c)(1)(iii), and 2640.201(c)(2). In EPA's experience, it is unlikely you, as the Deputy Associate Administrator

for Intergovernmental Affairs, will be in any position to affect the State's ability or willingness to pay these benefits to its retirees.

Nature and importance of the employee's role – As Deputy Associate Administrator for Intergovernmental Affairs, you serve as the Agency's principal point of contact with states and local governments. You help facilitate interactions with states and local governments and coordinate those activities with EPA's regional offices. In this role, you are expected to communicate freely with states, including Washington.

Sensitivity of the matter – We anticipate that there may be specific party matters in which you did not participate personally and substantially for the Governor's Office that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Deputy Associate Administrator for Intergovernmental Affairs in such matters will be of importance to the Administrator, and therefore, in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of Washington, but not on the very same specific party matters on which you worked on personally and substantially while employed by the Governor's Office. With respect to any particular matters involving Washington as a specific party and in which you previously participated personally and substantially, you have voluntarily agreed, pursuant to our advice, not to participate at all for the duration of your EPA tenure. If the Agency determines that it has a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you had previously participated while OGC/Ethics considers whether the Agency's interest in your participation outweighs any impartiality concern.

While I have issued you this determination to interact with the State of Washington with the limitation described above, you may wish to make adjustments to your duties to not participate in a particular matter that involves Washington. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with OGC/Ethics should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at fugh.justina@epa.gov or (202) 564-1786.

cc: Robin H. Richardson, Deputy Associate Administrator
Radha Adhar, Deputy Associate Administrator for Congressional Affairs

Thanks!

Shannon

Oh and here are the other comments you ll find on your report

Comments of Reviewing Officials (not publicly displayed on report)

PART	#	REFERENCE	COMMENT
		(b) (6), (b) (7) (A)	

Shannon Griffio
Office of General Counsel Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffio.Shannon@epa.gov

From: [Katims, Casey](#)
To: [Griffo, Shannon](#)
Subject: RE: Follow-up Question from OGC/Ethics
Date: Monday, February 1, 2021 4:27:15 PM

Sounds good – and makes sense. Just wanted to err on the side of over-communicating!

Thank you Shannon.

Casey

From: Griffo, Shannon <Griffo.Shannon@epa.gov>

Sent: Monday, February 1, 2021 4:26 PM

To: Katims, Casey <Katims.Casey@epa.gov>

Subject: RE: Follow-up Question from OGC/Ethics

Hi Casey,

No worries! Thanks for following up and letting me know. For purposes of your impartiality determination, it doesn't really change the financial conflict of interest analysis (you have no financial conflict of interest with the State). So it won't alter the ultimate conclusion that the US government's interest in your participation outweighs any concerns about your impartiality. There's just a factual mistake in it. That being said, we aren't inclined to reissue a new impartiality determination. If anyone asks at a later date, that's what you thought you had at the time the determination was signed. What matters is that you identify the right plan on your public financial disclosure report. Sound good?

Let me know if you have any other questions.

Thanks!

Shannon

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

Griffo.Shannon@epa.gov

From: Katims, Casey <Katims.Casey@epa.gov>

Sent: Sunday, January 31, 2021 7:01 PM

To: Griffo, Shannon <Griffo.Shannon@epa.gov>

Subject: RE: Follow-up Question from OGC/Ethics

Shannon:

I have a small correction to make to the below response, and apologize for confusion on my end! It turns out I only have defined contribution plan — not defined benefit. My tenure with the State was not long enough to qualify for the defined benefit portion of the State's retirement program. Let me know if a follow-up conversation on this is needed, and again, I apologize for my confusion. Thank you.

Casey

From: Katims, Casey

Sent: Tuesday, January 26, 2021 11:16 AM

To: Griffo, Shannon <Griffo.Shannon@epa.gov>

Subject: RE: Follow-up Question from OGC/Ethics

Hi Shannon -

Thanks for checking in. I have both a defined benefit and defined contribution plan with the state.

Hope that helps, let me know if you need anything else. My cell is (b) (6)

Casey

From: Griffo, Shannon <Griffo.Shannon@epa.gov>

Sent: Tuesday, January 26, 2021 9:34 AM

To: Katims, Casey <Katims.Casey@epa.gov>

Subject: Follow-up Question from OGC/Ethics

Hi Casey,

We are finalizing your impartiality determination so that you can work on certain specific party matters involving the State of Washington, but I had a quick question. One of the factors we have to address is whether you have a financial interest with the State (e.g., retirement plan). Justina thought you had a defined contribution plan only, but I wanted to confirm.

Thanks!

Shannon

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

Griffo.Shannon@epa.gov

From: [Katims, Casey](#)
To: [Fugh, Justina](#)
Cc: [Adhar, Radha](#); [Richardson, RobinH](#); [Griffo, Shannon](#)
Subject: RE: signed impartiality determination
Date: Tuesday, January 26, 2021 4:32:57 PM

Thank you, Justina. Received and understood. I appreciate your and Shannon's efforts on this.
Casey

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Tuesday, January 26, 2021 3:05 PM
To: Katims, Casey <Katims.Casey@epa.gov>
Cc: Adhar, Radha <Adhar.Radha@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>;
Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: signed impartiality determination

Hi Casey,

Attached is the signed impartiality determination to allow you to work on specific party matters that may arise in the next year in which the State of Washington (your former employer) is a party or represents a party. I am copying Radha Adhar and Robin Richardson, who is the Deputy Ethics Official for OCIR, as well as Shannon Griffo in OGC/Ethics who drafted the document.

Please note that we consider this a "limited" determination, meaning that you should not dive into working on behalf of EPA on any specific party matter that you already worked on for Washington without first checking in with ethics. That said, we don't really expect that you'll encounter any of those in your OCIR job.

Let me know if you have any questions and don't forget to get working on your financial disclosure report.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Katims, Casey](#)
To: [Griffo, Shannon](#)
Subject: FW: VIDA
Date: Friday, February 26, 2021 1:21:29 PM

From: Katims, Casey

Sent: Thursday, February 25, 2021 2:00 PM

To: Hanson, Andrew <Hanson.Andrew@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>

Cc: Richardson, RobinH <Richardson.RobinH@epa.gov>; Fericelli, Paul <fericelli.paul@epa.gov>

Subject: VIDA

Andrew and Jack:

I am writing to clarify my ethics obligations related to VIDA.

Pursuant to my impartiality determination from the Office of General Counsel, I am recused from specific party matters involving the State of Washington on which I worked personally and substantially while employed by the Governor's Office. OGC has confirmed for me for me that, because VIDA is a national law that applies to all states, it is not a specific party matter.

I have nevertheless recused myself from working on the VIDA objection letter submitted by Gov. Inslee in consultation with OGC.

Let me know any questions. Thanks!

Casey

From: [Griffo, Shannon](#)
To: [Fugh, Justina](#)
Subject: RE: Casey Katims draft impartiality determination
Date: Tuesday, January 26, 2021 1:19:00 PM
Attachments: [Casey Katims draft impartiality determination 1 26 21.docx](#)

Here is Casey's updated impartiality determination for your review. Once you've made any changes, I'm happy to convert it for your digital signature. A few notes based on your responses below:

- (b) (5), (b) (6)
[Redacted]
- [Redacted]
- [Redacted]

[Redacted]

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 1:20 AM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Casey Katims draft impartiality determination

Hi Shannon,

Thanks for drafting this so quickly!

- (b) (5)
[Redacted]
- [Redacted]

- (b) (5) [redacted]
[redacted]
[redacted]
- [redacted]
[redacted]
[redacted]
- [redacted]
[redacted]
[redacted]

Hope you're doing well!

Justina

From: Griffo, Shannon <Griffo.Shannon@epa.gov>

Sent: Wednesday, January 20, 2021 4:20 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: Casey Katims draft impartiality determination

There's still a few things needed, but here is a draft so you can say we have one if he's on the training tomorrow. I also don't know how fast you want to get this signed (and I'm out Friday). But I can follow-up with him next week unless you need it sooner. (b) (5) [redacted]

[redacted] A few things to note (highlighted in the attached draft):

- (b) (5) [redacted]
- [redacted]
[redacted]
[redacted]
[redacted]
- [redacted]
[redacted]
- [redacted]
- [redacted]
[redacted]

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

From: [Fugh, Justina](#)
To: [Griffo, Shannon](#)
Subject: Re: Casey Katims follow-up question
Date: Monday, February 22, 2021 11:57:31 AM

Just send him a confirmatory email and save that in his i:drive file. Which reminds me

Sent from my iPhone

On Feb 22, 2021, at 10:18 AM, Griffo, Shannon <Griffo.Shannon@epa.gov> wrote:

I'm about to certify Casey Katim's 278. No financial conflicts - only has the impartiality determination with Washington. He has reached out to ask me follow-up questions about the determination,

(b) (5)

please let me know.

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: [Fugh, Justina](#)
To: [Utech, Dan](#); [Cassady, Alison](#); [Blythers, Dorien](#); [Lance, Kathleen](#)
Cc: [Payne, James \(Jim\)](#); [Hope, Brian](#); [Nishida, Jane](#); [Carpenter, Wesley](#)
Subject: signed impartiality determination for the Administrator
Date: Thursday, March 11, 2021 9:53:00 PM
Attachments: [Impartiality determination - signed 3-11-21.pdf](#)

Hi there,

Attached is the impartiality determination signed by the Designated Agency Ethics Official, Jim Payne, to permit the Administrator to work on specific party matters with his former employer, the North Carolina Department of Environmental Quality. As indicated in the determination, the interest of the United States Government in your participation outweighs any concerns about a loss of impartiality for the Administrator to interact with his former agency. That said, he is still precluded from working the same specific party matters in which he participated personally and substantially while employed with NC DEQ unless he first seeks and obtains ethics clearance.

We look forward to meeting with the Administrator on Monday, March 15 for his initial ethics training.

Cheers,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the North Carolina Department of Environmental Quality

FROM: James Payne **JAMES PAYNE**
Designated Agency Ethics Official and Deputy General Counsel for Environmental Media and Regional Law Offices

TO: Michael S. Regan
Administrator

Digitally signed by JAMES PAYNE
Date: 2021.03.11 12:17:02 -05'00'

As the Administrator of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the North Carolina Department of Environmental Quality (NC DEQ). Within the last year, prior to being confirmed, you served as Secretary of the NC DEQ.

Under President Biden's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state and local government is excluded under the definition of "former employer."¹ Therefore the Ethics Pledge does not apply to your NC DEQ employment. Federal ethics rules, however, do not contain a similar exclusion for state or local government, so those rules do apply to your prior employment with the NC DEQ.

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." You have a "covered relationship" with the NC DEQ under 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date your employment with the NC DEQ terminated, absent an impartiality determination from me, you cannot participate in any specific party matter in which the NC DEQ is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

¹ *See* Exec. Order 13989, Section 2(k), which provides that "'former employer' does not include...State or local government."

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that we take into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality, and I am authorizing you to participate as Administrator in particular matters that involve the NC DEQ with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with NC DEQ. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since 2017, you have served as Secretary of the North Carolina Department of Environmental Quality. In this role, you oversaw the state agency whose mission is to protect North Carolina's environment and natural resources. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the NC DEQ. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you have a defined benefit plan with the State of North Carolina. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. But pursuant to the regulatory exemptions, this personal financial interest is not a disqualifying one that raises concerns about participation in particular matters affecting the holdings of the plan or in particular matters of general applicability affecting the sponsor of the plan under the federal conflicts of interest statute. See 5 C.F.R. §§ 2640.201(c)(1)(ii) and 2640.201(c)(2). In EPA's experience, it is unlikely you, as the Administrator, will be in any position to affect the State's ability or willingness to pay these benefits to its retirees.

Nature and importance of the employee's role – You have been appointed by the President and confirmed by the Senate to serve as the EPA Administrator, which is a crucial role in guiding and planning the Agency's work. As the leader of EPA, you are expected to communicate freely with states, including North Carolina.

Sensitivity of the matter – We anticipate that there may be specific party matters in which you did not participate personally and substantially for the NC DEQ that will rise to your level of attention, merit your participation, and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Administrator in such matters will be in the Agency's interests given the leadership role that you serve. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the NC DEQ, but not on the very same specific party matters on which you worked on personally and substantially while employed by the NC DEQ. With respect to any particular matters involving the NC DEQ as a specific party and in which you previously participated personally and substantially, you have voluntarily agreed, pursuant to our advice, not to participate at all for the duration of your EPA tenure. If the Agency determines that it has a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you had previously participated while OGC/Ethics considers whether the Agency's interest in your participation outweighs any impartiality concern.

While I have issued you this determination to interact with the NC DEQ with the limitation described above, you may wish to make adjustments to your duties to not participate in a particular matter that involves the NC DEQ as a specific party. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with OGC/Ethics should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786.

cc: Dan Utech, Chief of Staff
Alison Cassidy, Deputy Chief of Staff for Policy
Dorien Paul Blythers, Deputy Chief of Staff for Operations
Kathleen Lance, Director of Scheduling and Advance
Justina Fugh, Alternate Designated Agency Ethics Official

because in a few places that's how I saw the agency referring to itself. But I agree that NC is better.

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Tuesday, March 09, 2021 8:38 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Michael Regan - draft impartiality determination

Hi,
Thanks for doing this! Replying to your comments:

(b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2. I used the postal code abbreviation for NC instead of N.C.
3. (b) (5) [REDACTED]
4. I tweaked the cc list to remove John Lucey and insert Kathleen Lance instead.

See what you think, please! He may be confirmed as early as Thursday, but we can't get Jim's signature until after confirmation.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Monday, February 22, 2021 2:33 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Michael Regan - draft impartiality determination
Here's a draft impartiality determination for Michael Regan.

Thanks,

Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: [Fugh, Justina](#)
To: [Payne, James \(Jim\)](#)
Cc: [Griffo, Shannon](#)
Subject: Michael Regan impartiality determination for your signature
Date: Wednesday, March 10, 2021 7:38:29 PM
Attachments: [Michael Regan impartiality determination for digital signature.pdf](#)

Hi Jim,

Earlier this evening, the Senate confirmed Michael Regan as the next EPA Administrator. You and I are slated to provide him with ethics training on Monday, 3/15 at 9:30 am that will meet the requirements of both 5 CFR 2638.304 and 2638.305. He presents no ethics issues under the financial conflict of interest statute or the Biden Ethics Pledge that he will sign. He does have a covered relationship with NC DEQ, his former employer, under the impartiality regulations. Attached is an impartiality determination for your digital signature that will allow him to work with NC DEQ on new matters that he did not previously participate in personally and substantially. If he wants to connect with NC DEQ on something he worked on before, then he first needs to consult with Ethics for a case-by-case determination.

Shannon drafted the attached impartiality determination that is now ready for your signature. Please sign and then return to me for distribution.

Thanks,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Payne, James \(Jim\)](#)
To: [Fugh, Justina](#); [Griffo, Shannon](#)
Subject: RE: Michael Regan impartiality determination for your signature
Date: Thursday, March 11, 2021 12:19:06 PM
Attachments: [Michael Regan impartiality determination for digital signature.pdf](#)

Digitally signed and attached. Nicely written Shannon and thank you both.

This a.m. I gave Melissa and Jane N a heads up.

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Wednesday, March 10, 2021 7:38 PM
To: Payne, James (Jim) <payne.james@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: Michael Regan impartiality determination for your signature

Hi Jim,

Earlier this evening, the Senate confirmed Michael Regan as the next EPA Administrator. You and I are slated to provide him with ethics training on Monday, 3/15 at 9:30 am that will meet the requirements of both 5 CFR 2638.304 and 2638.305. He presents no ethics issues under the financial conflict of interest statute or the Biden Ethics Pledge that he will sign. He does have a covered relationship with NC DEQ, his former employer, under the impartiality regulations. Attached is an impartiality determination for your digital signature that will allow him to work with NC DEQ on new matters that he did not previously participate in personally and substantially. If he wants to connect with NC DEQ on something he worked on before, then he first needs to consult with Ethics for a case-by-case determination.

Shannon drafted the attached impartiality determination that is now ready for your signature. Please sign and then return to me for distribution.

Thanks,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the North Carolina Department of Environmental Quality

FROM: James Payne
Designated Agency Ethics Official and Deputy General Counsel for
Environmental Media and Regional Law Offices

TO: Michael S. Regan
Administrator

As the Administrator of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the North Carolina Department of Environmental Quality (NC DEQ). Within the last year, prior to being confirmed, you served as Secretary of the NC DEQ.

Under President Biden's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state and local government is excluded under the definition of "former employer."¹ Therefore the Ethics Pledge does not apply to your NC DEQ employment. Federal ethics rules, however, do not contain a similar exclusion for state or local government, so those rules do apply to your prior employment with the NC DEQ.

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." You have a "covered relationship" with the NC DEQ under 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date your employment with the NC DEQ terminated, absent an impartiality determination from me, you cannot participate in any specific party matter in which the NC DEQ is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

¹ *See* Exec. Order 13989, Section 2(k), which provides that "'former employer' does not include...State or local government."

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that we take into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality, and I am authorizing you to participate as Administrator in particular matters that involve the NC DEQ with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with NC DEQ. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since 2017, you have served as Secretary of the North Carolina Department of Environmental Quality. In this role, you oversaw the state agency whose mission is to protect North Carolina's environment and natural resources. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the NC DEQ. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you have a defined benefit plan with the State of North Carolina. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. But pursuant to the regulatory exemptions, this personal financial interest is not a disqualifying one that raises concerns about participation in particular matters affecting the holdings of the plan or in particular matters of general applicability affecting the sponsor of the plan under the federal conflicts of interest statute. See 5 C.F.R. §§ 2640.201(c)(1)(ii) and 2640.201(c)(2). In EPA's experience, it is unlikely you, as the Administrator, will be in any position to affect the State's ability or willingness to pay these benefits to its retirees.

Nature and importance of the employee's role – You have been appointed by the President and confirmed by the Senate to serve as the EPA Administrator, which is a crucial role in guiding and planning the Agency's work. As the leader of EPA, you are expected to communicate freely with states, including North Carolina.

Sensitivity of the matter – We anticipate that there may be specific party matters in which you did not participate personally and substantially for the NC DEQ that will rise to your level of attention, merit your participation, and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Administrator in such matters will be in the Agency's interests given the leadership role that you serve. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the NC DEQ, but not on the very same specific party matters on which you worked on personally and substantially while employed by the NC DEQ. With respect to any particular matters involving the NC DEQ as a specific party and in which you previously participated personally and substantially, you have voluntarily agreed, pursuant to our advice, not to participate at all for the duration of your EPA tenure. If the Agency determines that it has a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you had previously participated while OGC/Ethics considers whether the Agency's interest in your participation outweighs any impartiality concern.

While I have issued you this determination to interact with the NC DEQ with the limitation described above, you may wish to make adjustments to your duties to not participate in a particular matter that involves the NC DEQ as a specific party. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with OGC/Ethics should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786.

cc: Dan Utech, Chief of Staff
Alison Cassidy, Deputy Chief of Staff for Policy
Dorien Paul Blythers, Deputy Chief of Staff for Operations
Kathleen Lance, Director of Scheduling and Advance
Justina Fugh, Alternate Designated Agency Ethics Official

From: [Fugh, Justina](#)
To: [Griffo, Shannon](#)
Subject: RE: Administrator's updated draft recusal statement for review
Date: Wednesday, April 7, 2021 1:16:00 PM
Attachments: [recusal for signature.docx](#)

Okay. Incorporated comments. Am sending this version forward for signature. Thanks!

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Wednesday, April 07, 2021 1:07 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Administrator's updated draft recusal statement for review

Look at my comments related to the 2 cases.

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Wednesday, April 07, 2021 11:54 AM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Administrator's updated draft recusal statement for review

Thanks, as always, for your careful and thorough review. I've incorporated the descriptions into the chart (but had to look one up all myself, which is dangerous). If you have time, please take one more look at this and then I'll send it forward. I checked in with Kathleen Lance yesterday to alert her to the fact that his recusal will be coming in for signature.
Justina

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Tuesday, April 06, 2021 2:47 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Administrator's updated draft recusal statement for review

See my comments.

Thanks,
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: [Fugh, Justina](#)
To: [Seidman, Emily](#)
Cc: [Thrift, Mike](#); [Srinivasan, Gautam](#); [Griffo, Shannon](#)
Subject: RE: Recusal Question for Regan - SO2 designations
Date: Thursday, March 11, 2021 11:59:00 AM

Hi Emily,

Yes, Administrator Regan may participate in the signing of the supplement that deals only with Wisconsin.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Seidman, Emily <seidman.emily@epa.gov>
Sent: Thursday, March 11, 2021 7:55 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: Recusal Question for Regan - SO2 designations

Good morning, Justina.

Thank you again for your clear advice regarding Round 4 SO2 designations. I have a follow up question to the recusal question, described below.

OAQPS has prepared a "Supplemental Amendment" to the Round 4 SO2 NAAQS designations. This Supplemental Amendment changes the initial area designation of Outagamie County, Wisconsin.

While it is a supplement to the Round 4 SO2 NAAQS designations from which Administrator Regan is recused, it is a separate FR Notice and the supplemental action only covers Wisconsin.

I am interested in your advice on whether Administrator Regan should be recused from signing this supplement that only deals with Wisconsin.

Thank you in advance for your guidance on this question!

Emily

Emily Seidman | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | WJCN 7426Y | office phone: (202) 564-0906 | cell phone: (202) 794-0051

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From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, February 25, 2021 4:57 PM
To: Seidman, Emily <seidman.emily@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: Recusal Question for Regan - SO2 designations

Hi Emily (and Mike and Gautam),

My team and I appreciate VERY MUCH that you are all being so careful about ethics rules. As you can probably guess, though, the application of those rules to specific people in specific situations is not particularly intuitive. If you're the kind of person who looks for trends or precedence, then you're just not going to reach your happy place when thinking through recusal issues.

Michael Regan is not an attorney so -- unlike for Melissa, Dimple and Marianne -- we don't have to factor in bar obligations. If confirmed, he will be a political appointee who will sign the Biden Ethics Pledge. But since his prior employer will be a state, he will not be subject to the additional

restrictions of EO 13989. Instead, he will be bound only by the impartiality standards set forth at 5 CFR 2635.502, which prohibit his participation for one year in any specific party matter in which his former employer, NC DEQ, is a party or represents a party. This restriction is referenced in his signed ethics agreement that was provided to the SEPW. That said, an agency ethics official may issue a written impartiality determination to otherwise permit his participation. Consistent with how we have dealt with other Administrators coming from states (e.g., Lisa Jackson, Mike Levitt, Christine Todd Whitman), we have already drafted an impartiality determination that will permit Mr. Regan, if confirmed, to work with the NC DEQ, but only on those specific party matters in which he did not previously participate.

We consider that the SO2 NAAQS designations are specific party matters because they apply to geographic areas defined by legal boundaries (county, city) and affect the SO2 sources within that specific area. You indicate that Secretary Regan signed 3 or 4 letters that were sent to EPA as part of the process for EPA determining how to designate NC as part of this action. That involvement means that he must recuse from participation in signing the certification for NC. Since it appears you can't segregate NC from the other 43 designations (there is just one certification), we will advise him that he cannot participate. You're going to have to find someone else to sign that certification. Can it be done under the signature of the Acting Administrator instead?

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Seidman, Emily <seidman.emily@epa.gov>

Sent: Thursday, February 25, 2021 10:28 AM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Cc: Thrift, Mike <thrift.mike@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>

Subject: Recusal Question for Regan - SO2 designations

Hi Justina,

I have a recusal question, looking ahead to Michael Regan potentially being confirmed as Administrator.

In December 2020, then-Administrator Wheeler signed a Federal Register notice designating 44 areas throughout the country as either attainment or nonattainment for the SO2 NAAQS. An area in North Carolina was one of the 44 areas designated by that action. Pursuant to a court order, those designations had to be signed before December 31, 2020, which was completed. This action was not published in the FR before January 20, so it is back at EPA. It is very likely that the notice won't be re-signed (b) (5)

. However, the Administrator will likely sign a certification approving the action to proceed to publication.

Assuming a decision is made for the Administrator to sign this certification and move the action forward, would it be problematic for Michael Regan to sign that certification for this action, given that an area in North Carolina is one of the 44 specific areas covered by the designation action? For your understanding, there is a single Federal Register notice signed, but each of the 44 designation actions relies on the specific information for the area at issue in that designation decision. Also likely relevant, as Secretary of NCDEQ, Regan signed 3 or 4 letters that were sent to EPA as part of the process for EPA determining how to designate NC as part of this action.

OAQPS is preparing materials to help OAR management decide when and how to proceed with this

action, so it would be helpful to get your assessment today on whether you think there would be a need for Michael Regan to be recused from signing the certification for this action. Understanding that is a short turnaround and you have a lot on your plate, if today isn't doable, feedback by Monday morning would be great.

I'm copying Gautam for his awareness and Mike Thrift since he was the OGC lead for the underlying action and can help answer any follow up questions you may have. Thanks very much for your guidance on this, Justina.

Emily

Emily Seidman | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | WJCN 7426Y | office phone: (202) 564-0906 | cell phone: (202) 794-0051

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From: [Conrad, Daniel](#)
To: [Fugh, Justina](#)
Cc: [Griffo, Shannon](#)
Subject: RE: The Administrator's recusal list
Date: Thursday, March 25, 2021 3:16:47 PM
Attachments: [NC DEQ Cases.xlsx](#)

Justina,

I searched OneDocket for active cases in which NC DEQ (or NC DENR its old name) was a party, I found those two and two more, I tracked down one of them and discovered it was accidentally remaining as active but actually completed, so only three identified (see attached). Of note, the additional case (15-1239 D.C. Cir.) has been in abeyance since 2017 with just status reports being filed. In Melissa's case I think we asked the ADDs to verify the accuracy of the list (there were a lot more and we weren't provided a list to cross-check it I don't believe), which resulted in them sending it to all attorneys. I'm not sure if that is necessary here since our list matches NC's for the most part.

-Dan

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Wednesday, March 24, 2021 10:22 PM
To: Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: The Administrator's recusal list

Hi Dan,

In terms of ethics restrictions, Administrator Regan has a "covered relationship" with his former employer, the North Carolina Department of Environmental Quality (NC DEQ). We issued him a limited impartiality determination (see attached) to allow him to work on new issues with the NC DEQ that may arise. But unless he asks for specific authorization, he is recused from working on any specific party matters that he worked on personally and substantially while at NC DEQ. We want to nail down what those specific party matters are so that we can include them in his recusal statement. I am writing to ask you to help identify any specific party matters that are pending at EPA and in which the NC DEQ is a party or represents a party. The list I obtained from the NC DEQ General Counsel is short:

- NC DEQ (and the State of NC) are individually named-plaintiffs in the pending litigation involving the Navigable Waters Protection rule dated April 21, 2020: State of Cal, et al. (including NC & DEQ) v. EPA, USACE, Case 3:20-cv-03005 (N.D. Cal); and
- DEQ is a respondent-intervenor in the pending litigation involving EPA Region 4's approval dated April 28, 2020 of a NC SIP revision for a rule regarding NOx emissions and to withdraw the SSM SIP Call for North Carolina that was issued during the 2015 SSM SIP Action: Sierra Club, Natural Resources Defense Council, Clean Air Carolina, and Environmental Integrity Project, Petitioners v. EPA and Andrew Wheeler, Respondents, NC DEQ and SSM Litigation Group, Respondent-Intervenors, 20-1229 (D.C. Cir.)

Remember that search you did for Melissa? Can you do that to find NC DEQ cases? We need NC DEQ specifically, not all NC cases. Is this something that you can do? If not, I can send a note to all of the Associates and Directors.

Thanks so much!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Utech, Dan](#)
Cc: [Hoffer, Melissa](#); [Payne, James \(Jim\)](#)
Subject: Question raised about the Administrator's recusal
Date: Wednesday, May 19, 2021 11:52:00 AM
Attachments: [Recusal.Statement.Memo.SIGNED.pdf](#)
Importance: Low

Hi Dan,

Yesterday, Melissa Hoffer asked me whether I had any ethical concerns with allowing the Administrator to participate in discussions about how the Agency should interact generally with the Department of Justice (DOJ) on litigation regarding the definition of WOTUS, given that he is recused from one case in particular, the State of California, et al. v. Andrew R. Wheeler, Case No. 3:20-cv-03005 (N.D. Cal). I am writing to confirm that I do not have any concerns.

Upon taking office, President Biden tasked the EPA and DOD with reviewing the previous administration's Navigable Waters Protection Rule (NWPR). He also signed an [executive order](#) that revoked the 2017 order calling for a review and reversal of the WOTUS rule established in the Obama administration. As you know, there are more than a dozen pending cases regarding the NWPR/WOTUS, and the Administrator is recused from just one of them. He is not himself a lawyer, so he does not have any bar restrictions. Instead, he has only an impartiality concern that is articulated in the attached recusal statement. Pursuant to 5 C.F.R. § 2635.502(d), an ethics official could determine that his participation in that specific party matter is nevertheless in the interests of the government, his recusal notwithstanding. As it happens, though, I needn't make that determination – which I ethically could make – since the Administrator is not participating in the case itself. (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The agency may engage with the Administrator about this policy matter without violating his ethics obligations.

If you have any questions regarding this advice, please let me know.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

April 27, 2021

THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Recusal Statement

FROM: Michael S. Regan
Administrator

A handwritten signature in black ink, reading "Michael S. Regan", is positioned to the right of the "FROM:" line.

TO: Acting Assistant Administrators
Acting General Counsel
Inspector General
Acting Regional Administrators

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed.

FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest. I will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

OBLIGATIONS UNDER EXECUTIVE ORDER 13989

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I have ethics obligations with respect to my former employer, the North Carolina Department of Environmental Quality (NC DEQ). The Executive Order provides more restrictions than the federal ethics rules, but I am advised by OGC/Ethics that the additional restrictions contained in the Executive Order regarding former employer do not apply to me. The definition of “former employer” excludes state government.¹ Therefore, OGC/Ethics has confirmed that I am not subject to the additional Executive Order restrictions regarding former employers.

OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS

Pursuant to the federal impartiality standards, I understand that I have a “covered relationship” with my former employer, which is a state government agency. However, on March 11, 2021, EPA’s Designated Agency Ethics Official issued an impartiality determination that authorizes me to participate as Administrator in particular matters that involve the NC DEQ, but not on the very same specific party matters I worked on personally and substantially while employed with the NC DEQ. See attached impartiality determination. Given my previous role at the NC DEQ, I am recusing myself from the following specific party matters:

CASE NAME and/or SUBJECT MATTER:	CITATION and/or DESCRIPTION:
State of California, <i>et al.</i> v. Andrew R. Wheeler, <i>et al.</i>	Case No. 3:20-cv-03005 (N.D. Cal) (litigation involving the definition of WOTUS)
Sierra Club, <i>et al.</i> v. EPA	Case No. 20-1229 (D.C. Cir.) (litigation involving EPA’s April 2020 SIP Call Withdrawal and Air Plan Approval; NC: Large Internal Combustion Engines NOx Rule Changes)
Environmental Committee of the Florida Electric Power Coordinating Group v. EPA	Case No. 15-1239 (D.C. Cir.) (challenge to EPA’s 2015 SIP call)
Round 4 SO2 Designations	As part of the Round 4 SO2 designation, EPA designated Haywood County, NC as attainment/unclassifiable.
Blue Ridge Paper Product Source Specific SIP Revision	In December 2020, EPA approved a source-specific SIP revision for Blue Ridge Paper Products to reduce SO2 emissions from the facility.

If any other specific party matters arise at EPA, in which I participated personally and substantially while at NC DEQ, I understand that I must recuse myself from participating in those particular matters.

¹ See Exec. Order 13989, Section 2(k), which provides that “‘former employer’ does not include...State or local government.”

SCREENING ARRANGEMENT

In order to ensure that I do not participate in particular matters from which I am recused, I have asked Dan Utech, Chief of Staff, to assist in screening EPA matters directed to my attention. All inquiries and comments involving my recusals should be directed to the Chief of Staff without my knowledge or involvement.

If the Chief of Staff determines I am recused, then he will take action or refer it for action or assignment to another, without my knowledge or involvement. In the event that the Chief of Staff is unsure whether an issue is a particular matter from which I am recused, then he will consult with OGC/Ethics for a determination.

UPDATE AS NECESSARY

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes to my screening arrangement, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Dan Utech, Chief of Staff
Alison Cassady, Deputy Chief of Staff for Policy
Dorien Blythers, Deputy Chief of Staff for Operations
Wesley J. Carpenter, Acting Deputy Chief of Staff
Kathleen Lance, Director of Scheduling and Advance
John Lucey, Special Assistant to the Administrator
James Payne, Designated Agency Ethics Official and Deputy General Counsel for
Environmental Media and Regional Law Offices
Justina Fugh, Alternate Designated Agency Ethics Official

From: [Fugh, Justina](#)
To: [Palmer, Leif](#); [Starfield, Lawrence](#)
Cc: [Griffo, Shannon](#)
Subject: The Administrator's recusal list
Date: Wednesday, March 24, 2021 10:09:00 PM
Attachments: [Impartiality determination - signed 3-11-21.pdf](#)

Hi there,

In terms of ethics restrictions, Administrator Regan has a "covered relationship" with his former employer, the North Carolina Department of Environmental Quality (NC DEQ). We issued him a limited impartiality determination (see attached) to allow him to work on new issues with the NC DEQ that may arise. But unless he asks for specific authorization, he is recused from working on any specific party matters that he worked on personally and substantially while at NC DEQ. We want to nail down what those specific party matters are so that we can include them in his recusal statement. I am writing to ask you to help identify any specific party matters that are pending at EPA and in which the NC DEQ is a party or represents a party. The list I obtained from the NC DEQ General Counsel is short:

- NC DEQ (and the State of NC) are individually named-plaintiffs in the pending litigation involving the Navigable Waters Protection rule dated April 21, 2020: State of Cal, et al. (including NC & DEQ) v. EPA, USACE, Case 3:20-cv-03005 (N.D. Cal); and
- DEQ is a respondent-intervenor in the pending litigation involving EPA Region 4's approval dated April 28, 2020 of a NC SIP revision for a rule regarding NOx emissions and to withdraw the SSM SIP Call for North Carolina that was issued during the 2015 SSM SIP Action: Sierra Club, Natural Resources Defense Council, Clean Air Carolina, and Environmental Integrity Project, Petitioners v. EPA and Andrew Wheeler, Respondents, NC DEQ and SSM Litigation Group, Respondent-Intervenors, 20-1229 (D.C. Cir.)

Are you aware of any other specific party matters involving NC DEQ that we should add to his recusal list? Can you ask around and get back to Shannon Griffo and me by the end of next week?

Thanks so much!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Griffo, Shannon](#)
Subject: FW: [External] Turns out we do need your help, please
Date: Thursday, March 11, 2021 1:22:06 PM

In addition to the SO2 NAAQS designations for NC, this is all we know:

From: Fugh, Justina
Sent: Wednesday, February 10, 2021 12:56 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: FW: [External] Turns out we do need your help, please

From: Lane, Bill F <(b) (6)>
Sent: Thursday, January 28, 2021 4:11 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: [External] Turns out we do need your help, please
Justina,

We have reviewed our records and verified the following information:

1. Regarding your January 21, 2020 email below (EPW Question #5), during Secretary Regan's employment at NC DEQ during 2017-2021, he has not participated as an individually-named litigant or agent in litigation in which the Federal Government was a party.
2. Regarding your January 12, 2020 email below, NC DEQ (and the State of NC) are individually named-plaintiffs in the pending litigation involving the Navigable Waters Protection rule dated April 21, 2020: State of Cal, et al. (including NC & DEQ) v. EPA, USACE, Case 3:20-cv-03005 (N.D. Cal)
3. Regarding your January 12, 2020 email below, NC DEQ is a respondent-intervenor in the pending litigation involving EPA Region 4's approval dated April 28, 2020 of a NC SIP revision for a rule regarding NOx emissions and to withdraw the SSM SIP Call for North Carolina that was issued during the 2015 SSM SIP Action: Sierra Club, Natural Resources Defense Council, Clean Air Carolina, and Environmental Integrity Project, Petitioners v. EPA and Andrew Wheeler, Respondents, NC DEQ and SSM Litigation Group, Respondent-Intervenors, 20-1229 (D.C. Cir.)

If you have any questions about this information, please let me know.

Bill Lane
General Counsel
N.C. Department of Environmental Quality
919-707-8616
1601 Mail Service Center
Raleigh NC 27699-1601

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Fugh, Justina [<mailto:Fugh.Justina@epa.gov>]
Sent: Thursday, January 21, 2021 9:53 PM
To: Lane, Bill F <(b) (6)>
Subject: [External] Turns out we do need your help, please

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Hi again,

In preparation for confirmation of Michael Regan, the Senate Environment and Public Works Committee has asked a question that we hope you can help address:

QUESTION #5: Please list any litigation during the last 10 years, to which the Federal Government was a party, which you have participated in either as a litigant, or acting as an agent. If you acted as a legal representative of others in litigation with the Federal Government, please specify who your clients were.

We know that Mr. Regan is not himself an attorney, but can you help provide any insights into any federal cases in which he is named as a litigant or agent during his tenure with NC DEQ? I recall your saying that the AG's office provides the representation, but might there be some other litigation in which he is named?

We'll have to ask him ourselves about any litigation prior to joining NC DEQ, but thanks in advance for your assistance!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Lane, Bill F <(b) (6)>
Sent: Wednesday, January 13, 2021 11:40 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: [External] hello from EPA Ethics

Justina,

Thank you for your summary of our conversation. If you need any further information, please let me know.

Bill Lane

General Counsel

N.C. Department of Environmental Quality

919-707-8616

1601 Mail Service Center

Raleigh NC 27699-1601

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Fugh, Justina [<mailto:Fugh.Justina@epa.gov>]
Sent: Tuesday, January 12, 2021 5:46 PM
To: Lane, Bill F <(b) (6)>
Subject: [External] hello from EPA Ethics

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Hi there,

Thanks very much for reaching out earlier today. I'm sorry that it's taken so long to send you this email, but at least I didn't forget completely! As we discussed, I simply do not know whether the Biden Administration will require its political appointees to sign a pledge that will include additional ethics obligations. But if they follow the two previous pledges, then the additional restrictions regarding former employers will be inapplicable to Michael Regan

because he comes to federal service from a state. See Executive Order 13,490, Section 2 (i) (1/21/09), and Executive Order 13770, Section 2 (j) (1/28/17).

He would, though, still be subject to the loss of impartiality provisions of the Standards of Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, Subpart E. Pursuant to 5 C.F.R. § 2635.502(b)(1)(iv), he will have a one year “cooling off” period during which he cannot work as part of his EPA duties on any specific party matter in which the North Carolina Department of Environmental Quality (NC DEQ) is a party or represents a party, unless he first obtains a written impartiality determination from my office. We are certainly prepared to consider any such request, and we’ll appreciate your help as we try to anticipate whether the NC DEQ has any active specific party matters with EPA or not.

So, as things develop and evolve, I may need to be in touch with you, or you may always reach out to me. My contact information is included in my signature block.

Thanks again for your call today!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the South Coast Air Quality Management District

FROM: Justina Fugh, Alternate Designated Agency Ethics Official
and Director, Ethics Office

Justina Fugh

Digitally signed by Justina
Fugh
Date: 2021.02.22
02:10 31 -05'00'

TO: Philip Fine
Principal Deputy Associate Administrator for Policy

As the Principal Deputy Associate Administrator for the Office of Policy of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the South Coast Air Quality Management Division. Within the last year, prior to being selected for this position, you served as the Deputy Executive Officer for the Planning, Rule Development & Area Sources Division of the South Coast Air Quality Management District (South Coast AQMD).

Under President Biden's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state and local government is excluded under the definition of "former employer."¹ Therefore the Ethics Pledge does not apply to your District employment. Federal ethics rules, however, do not contain a similar exclusion for state or local government, so those rules do apply to your prior employment with the South Coast AQMD.

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." You have a "covered relationship" with the South Coast AQMD under 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date your employment with the South Coast AQMD terminated, absent an impartiality determination from me, you cannot participate in any specific party matter in which the South Coast AQMD is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. See 5 C.F.R. § 2635.502(a).

¹ See Exec. Order 13989, Section 2(k), which provides that "'former employer' does not include...State or local government."

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that we take into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality, and I am authorizing you to participate as Principal Deputy Associate Administrator for the Office of Policy in particular matters that involve the South Coast AQMD with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with South Coast AQMD. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since 2015, you have served as the Deputy Executive Officer for the Planning, Rule Development & Area Sources Division of the South Coast AQMD. In this role, you oversaw all activities for the Division, including development of State Implementation Plans and Air Quality Management Plans, strategies and regulations for air pollution control, meteorology and forecasting, air quality evaluation, air toxics risk assessment, emissions inventories, socioeconomic analyses, transportation programs, and enforcement for area sources. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the South Coast AQMD. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you have a defined contribution plan and a defined benefit plan with the South Coast AQMD. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the District's ability or willingness to honor its contractual obligations with respect to your state retirement

interests. But pursuant to the regulatory exemptions, this personal financial interest is not a disqualifying one that raises concerns about participation in particular matters affecting the holdings of the plan or in particular matters of general applicability affecting the sponsor of the plan under the federal conflicts of interest statute. *See* 5 C.F.R. §§ 2640.201(c)(1)(ii) and 2640.201(c)(2). In EPA's experience, it is unlikely you, as the Principal Deputy Associate Administrator for the Office of Policy, will be in any position to affect the District's ability or willingness to pay these benefits to its retirees.

Nature and importance of the employee's role – As the Principal Deputy Associate Administrator for Policy, you serve as a key advisor to the Associate Administrator and work with your EPA colleagues to support Agency priorities and enhance decision-making. Among other things, the Office of Policy provides expertise for regulatory policy and management, community revitalization, climate adaptation, environmental justice, environmental permitting, and stakeholder engagement. As the Principal Deputy Associate Administrator, you are expected to communicate freely with states and localities.

Sensitivity of the matter – We anticipate that there may be specific party matters in which you did not participate personally and substantially for the South Coast AQMD that will rise to your level of attention, merit your participation, and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Principal Deputy Associate Administrator for Policy in such matters will be of importance to the Associate Administrator, and therefore, in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the South Coast AQMD, but not on the very same specific party matters on which you worked on personally and substantially while employed by the South Coast AQMD. With respect to any particular matters involving District as a specific party and in which you previously participated personally and substantially, you have voluntarily agreed, pursuant to our advice, not to participate at all for the duration of your EPA tenure. If the Agency determines that it has a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you had previously participated while OGC/Ethics considers whether the Agency's interest in your participation outweighs any impartiality concern.

While I have issued you this determination to interact with the South Coast AQMD with the limitation described above, you may wish to make adjustments to your duties to not participate in a particular matter that involves the District as a specific party. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with OGC/Ethics should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at fugh.justina@epa.gov or (202) 564-1786.

cc: Victoria Arroyo, Associate Administrator for Policy
Helena Wooden-Aguilar, Deputy Associate Administrator

From: [Fugh, Justina](#)
To: [Fine, Philip](#)
Subject: Re: I hear there's a meeting on your calendar today
Date: Monday, February 22, 2021 11:55:17 AM

Correct!

Sent from my iPhone

On Feb 22, 2021, at 9:42 AM, Fine, Philip <Fine.Philip@epa.gov> wrote:

Thanks Justina. I had no involvement in Sacramento's SIP development or submittal. Some of the issues raised by the potential litigation are similar to certain elements of the South coast SIP's I did work on, but I assumed based on our discussion on specific party matters that it would be ok.

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Sunday, February 21, 2021 11:20 PM
To: Fine, Philip <Fine.Philip@epa.gov>
Subject: I hear there's a meeting on your calendar today

Hi Phil,

I heard that you've been invited to a meeting today with outside parties and the Office of Environmental Justice regarding a submission from CARB for Sacramento (see [the SIP submittal](#)). We consider SIPs to be specific party matters, so I have to ask you: while with the South Coast Air Quality Management District, did you by chance work on this particular SIP? Even though it's north of the South Coast's area of interest? I'm assuming you did not, so it'll be okay for you to attend the meeting. Also, attached is an impartiality determination to permit you to work in general with the South Coast AQMD. Please note, however, that as part of your EPA duties, you should not assume you may work on the same specific party matters you worked on while at the South Coast. We'll want you to recuse first and consult with us first.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Griffo, Shannon

From: Fugh, Justina
Sent: Monday, July 5, 2021 10:11 PM
To: Fine, Philip
Subject: RE: lawsuit-challenging-rollbacks-may28-2020.pdf
Attachments: Philip Fine -- signed impartiality determination 2-22-21.pdf

Hi,

Well, I'm glad the answer is that we spoke instead of my just ignoring your email! I can't find any outgoing message, but I can write one now. Before joining EPA, your previous employer was the South Coast Air Quality Management District, which is a governmental entity. It is therefore exempted from the definition of "former employer" for the purposes of Executive Order 13989 and the Biden Ethics Pledge that you signed. Instead, you have a "covered relationship" with SCAQMD pursuant to the impartiality regulations. For one year since you left SCAQMD, you cannot participate in any specific party matter in which it is a party or represents a party. As we no doubt discussed when we talked, the SAFE rulemaking is not a specific party matter but rather a matter of general applicability that does not raise any ethics concern for you. We also issued you an impartiality determination (see attached) that allows you to work with SCAQMD on any new specific party matters that may arise in this year, so long as you didn't work on it yourself. Finally, since you're not an attorney, I didn't have to discuss bar obligations.

Justina (better late than never)

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

-----Original Message-----

From: Fine, Philip <Fine.Philip@epa.gov>
Sent: Monday, July 05, 2021 9:46 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Re: lawsuit-challenging-rollbacks-may28-2020.pdf

We spoke about it, and it seemed like I was ok as long as the EPA work was not specifically related to the lawsuit. I remember you said you would send me a note clarifying, and now I can't remember if I ever got it. I can check tomorrow.

Sent from my iPhone

> On Jul 5, 2021, at 6:42 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

>

> Hi there,

> I was spending the waning hours of the holiday weekend going through my email for FOIA searches, and I came across this message from you, still unread. Is this something that is still pending with me or OGC/Ethics? if so, YIKES!

> Justina

>

> Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

>

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> -----Original Message-----

> From: Fine, Philip <Fine.Philip@epa.gov>

> Sent: Thursday, March 04, 2021 10:56 AM

> To: Fugh, Justina <Fugh.Justina@epa.gov>

> Subject: lawsuit-challenging-rollbacks-may28-2020.pdf

>

> If this lawsuit is still active, does it conflict me out of the current SAFE rulemaking effort? And if the lawsuit has been withdrawn? (I'll check on that)

>

>

> You can view "lawsuit-challenging-rollbacks-may28-2020.pdf" at:

>

>

>

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fdocumentcloud.adobe.com%2Flink%2Ftrack%3Furi%3Durn%3Aaaid%3Ausc%3AUS%3A74cc30f4-bf9e-4e66-a85d-b0c2e046f7e6&data=04%7C01%7CFugh.Justina%40epa.gov%7C234ddb2b45634496987808d9401fd1d6%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637611327694001300%7CUnknown%7CTWFPbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=nyxc88MRk0a3xCp5jOFWlZGmLXmjx94AM5l7hDyzugc%3D&reserved=0>

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> Sent with Adobe Document Cloud. Click on the link above to access the file online. No sign up or installation of Acrobat is required to access.

From: [Fugh, Justina](#)
To: [Griffo, Shannon](#)
Subject: RE: Recusal Question - OEJ meeting re Sacramento
Date: Monday, February 22, 2021 2:13:20 AM
Attachments: [Philip Fine -- signed impartiality determination 2-22-21.pdf](#)

Shannon,

Thank you for doing this. I did make the change (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

Justina

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Friday, February 12, 2021 9:07 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Recusal Question - OEJ meeting re Sacramento

(b) (5)

[REDACTED]

I can revise. Just let me know.

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, February 11, 2021 6:34 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Recusal Question - OEJ meeting re Sacramento
Oh, that would be fabulous. Yes, please!

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Thursday, February 11, 2021 4:28 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Recusal Question - OEJ meeting re Sacramento
Do you want me to draft the impartiality determination for you?

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, February 11, 2021 4:25 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Recusal Question - OEJ meeting re Sacramento
He's mine (I just realized that!) and, yes, he needs help!

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Thursday, February 11, 2021 3:54 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: FW: Recusal Question - OEJ meeting re Sacramento
Who's assigned to Phil Fine? Doesn't he need an impartiality determination?

From: Seidman, Emily <seidman.emily@epa.gov>

Sent: Thursday, February 11, 2021 1:28 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Cc: Christenson, Kara <Christenson.Kara@epa.gov>; OGC Ethics <OGC_Ethics@epa.gov>

Subject: FW: Recusal Question - OEJ meeting re Sacramento

Hi Justina,

We have a meeting scheduled on February 22 with outside parties and the Office of Environmental Justice regarding a submission from CARB (California Air Resource Board) for Sacramento. Phil Fine is currently included in the meeting, and Kara and I were wondering about the scope of his recusal. Do you know whether his recusal is limited to South Coast Air Quality Management District or does it extend to all of California air issues?

I know that each individual is responsible for managing his or her own recusals, but we didn't want to mistakenly have invited Phil to a meeting.

I've copied OGC Ethics since I assume Justina is swamped these days...

Thanks for your help.

Emily

Emily Seidman | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | WJCN 7426Y | office phone: (202) 564-0906 | cell phone: (202) 794-0051

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From: Christenson, Kara <Christenson.Kara@epa.gov>

Sent: Thursday, February 11, 2021 1:10 PM

To: Seidman, Emily <seidman.emily@epa.gov>

Subject: OEJ meeting re Sacramento

Hi Emily – I think Phil Fine is on the invite list for this meeting. I was wondering if you know whether there has been a recusal review done for him? I would assume that he is recused from matters involving South Coast, but maybe not for California?

Kara Christenson | Senior Counsel | U.S. EPA Region 9 | Office of Regional Counsel | 75 Hawthorne Street | San Francisco, CA 94105 | 415 972-3881 (desk) | 415 652-6330 (cell) | christenson.kara@epa.gov

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